

## Montana Operations Manual

# Salary Basis Policy

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<b>Issuing Authority</b>	Department of Administration	<b>Effective Date</b>	June 8, 2010
	State Human Resources Division	<b>Last Revised</b>	June 8, 2010

### Policy Purpose:

This policy establishes the criteria governing how deductions may be made from the salary of an employee in a position identified as exempt from the Fair Labor Standards Act (FLSA) and Montana's wage and hours laws. This policy also establishes a complaint procedure for employees in exempt positions who think their pay has been improperly reduced.

### Scope:

This policy covers all positions identified as exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) and Montana's wage and hours laws except elected officials, the personal staff of elected officials, those employed by the Montana university system, the Montana State Fund, and any other position specifically excluded under Section 2-18-103 and -104, MCA.

Any collective bargaining agreement providing greater salary basis rights supersedes this policy.

### Procedures:

Montana state government will comply with the salary basis requirements for positions exempt from the FLSA and Montana wage and hour laws. Montana state government does not allow deductions potentially violating the law. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements outlined by the U.S. Department of Labor and Montana's Department of Labor and Industry.

Agency managers may provide additional compensation, such as one-time lump sum payments, to an employee in an exempt position without losing the exemption or violating the salary-basis requirement. Additional compensation must comply with the Broadband Pay Plan Policy (MOM #03-0501) as well as any agency-specific pay plan rules.

#### A. Salary Basis Requirement

An employee will be considered to be paid on a "salary basis" if the employee regularly receives each pay period, a predetermined amount constituting all or part of the employee's compensation. This amount may not be reduced because of variations in the quality or quantity of the work performed.

Subject to the permissible deductions provided in section B, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the agency. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available. Employees in exempt positions do not need to be paid for any workweek in which they perform no work.

Agency managers are prohibited from making improper deductions from the salaries of employees in exempt positions. The salary-basis method of payment allows appropriate leave-bank deductions, such as sick leave, annual leave and compensatory time. The salary basis policy also permits the deductions outlined in section B.

## **B. Permissible Deductions**

Deductions from pay are permissible when an employee in an exempt position:

1. starts or ends employment with an agency on a day in the middle of the workweek;
2. takes unpaid leave under the Family and Medical Leave Act (FMLA);
3. is absent from work for one or more full days for personal reasons other than sickness or disability;
4. is absent from work for illness or disability if the deduction is made in accordance with the Sick Leave Policy (MOM #03-0310) or State workers' compensation law;
5. has penalties imposed for infractions of safety rules of major significance; or
6. receives an unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.

Executive branch employees in exempt positions will continue to meet the salary-basis requirements under the FLSA when their weekly pay is reduced for time in a leave without pay status of less than one workday, for any of the following reasons:

1. permission for the use of accrued paid time off was not requested or the request was denied;
2. accrued leave has been exhausted; or
3. the employee chooses to use leave without pay (29 CFR 541.710).

Deductions from the pay of an employee for absences resulting from a budget-required furlough disqualify the employee from being paid on a salary basis **only** in the workweek when the furlough occurs and for which the employee's pay is accordingly reduced.

## **C. Complaint Procedure**

Employees in exempt positions, who believe the agency made an improper deduction to their salary, should immediately report this information to their supervisor or to another designated agency representative.

Agency management must promptly investigate reports of improper deductions. If an improper deduction occurred, agency management must reimburse the employee for the improper deduction. Management will process the reimbursement through the next regularly scheduled payroll cycle.

If the employee and the supervisor cannot reach agreement, the employee may file a formal grievance, as provided in the Grievances Policy (2.21.8010 through 2.21.8030, ARM).

## Resources:

Link to US Department of Labor salary basis factsheet –

[http://www.dol.gov/whd/regs/compliance/fairpay/fs17g\\_salary.htm](http://www.dol.gov/whd/regs/compliance/fairpay/fs17g_salary.htm)

Link to salary requirements; Title 29, CFR, Chapter V, part 541, subpart G -

[http://www.dol.gov/dol/allcfr/Title\\_29/Part\\_541/Subpart\\_G.htm](http://www.dol.gov/dol/allcfr/Title_29/Part_541/Subpart_G.htm)

Link to salary requirements; Title 29, CFR, Chapter V, part 541.602 – Salary Basis

[http://www.dol.gov/dol/allcfr/Title\\_29/Part\\_541/29CFR541.602.htm](http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.602.htm)

Link to Employees of Public Agencies; title 29, CFR, Chapter V, part 541, subpart H -

[http://www.dol.gov/dol/allcfr/Title\\_29/Part\\_541/29CFR541.710.htm](http://www.dol.gov/dol/allcfr/Title_29/Part_541/29CFR541.710.htm)

Discipline Policy (2.21.6505 through 2.21.6515, ARM) -

<http://www.mtrules.org/gateway/Subchapterhome.asp?scn=2%2E21%2E65>

State Human Resources Division's *Discipline Handling Guide* -

<http://hr.mt.gov/hrpp/guides.mcp>

## Definitions:

This policy includes all definitions under 2-18-101, MCA. For purposes of this policy, the following definitions also apply.

**Salary basis** means an employee in an exempt position regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced except as provided by the provisions of this policy and law.